

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Case No. 18-cr-14-1-SM

Opinion No. 2020 DNH 214

Hector Velez

ORDER

Defendant's motion for "compassionate release" from incarceration under the First Step Act, 18 U.S.C. § 3582(a)(1)(A), given the COVID-19 pandemic, is properly before the court as defendant has exhausted available administrative remedies.

The burden is on defendant to show that he is entitled to relief, that is: 1) that extraordinary and compelling reasons warrant a reduction in his sentence, and 2) such a reduction would be consistent with the sentencing factors set out in 18 U.S.C. § 3553(e), as well as Sentencing Commission Policies (though that is not strictly required under the First Step Act).

Here, the government concedes that defendant's medical conditions (asthma and obesity) place him in a high-risk category should he contract COVID-19, and that defendant has met

his burden to show "extraordinary and compelling" reasons warranting sentence reduction in that respect. But, says the government, the sentencing factors weigh heavily against defendant's early release, particularly the danger defendant poses to the community. See 18 U.S.C. § 3142(g); USSG § 1B1.13(2).

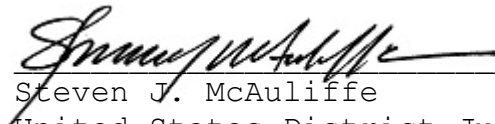
Defendant was convicted of unlawful possession of a firearm, and has served about 12 months of a 60-month sentence. He has a history of recidivism, including a prior conviction for first degree assault and rioting, and he committed the current offense while on probation. Defendant has plainly not met his burden to show that he no longer poses a danger to the safety of the community. In addition, defendant's early release would, under these circumstances, be inconsistent with the sentencing goals of promoting respect for the law, imposing a just punishment, protecting the public, and providing for both general and specific deterrence. 18 U.S.C. § 3553(a).

Conclusion

While FCI Berlin has experienced an increase in the presence of the COVID-19 virus, consistent with an increase in the surrounding community, the staff continues to take appropriate mediation measures to limit its spread within the

facility. The danger to public safety defendant would pose if released, and the sentencing factors described in 18 U.S.C. § 3553(a) militate against defendant's early release. Even if defendant were granted early release, his record does not suggest that he would likely abide by restrictive conditions or follow CDC guidelines designed to limit spread of the virus. The motion for compassionate release under the First Step Act (document no. 36) is hereby denied.

SO ORDERED.


Steven J. McAuliffe
United States District Judge

December 10, 2020

cc: Anna Z. Krasinski, AUSA
Eric Wolpin, Esq.
U.S. Probation
U.S. Marshal